

(2013) 07 GUJ CK 0022

In the Gujarat High Court

Case No : First Appeal No's. 2847, 2848, 2849 of 1999, Civil Appli. No. 10557 of 1999 and Cross-Objection No. 291 of 1999 in F.A. No. 2847 of 1999

Gujarat State Road Transport Corporation APPELLANT

Vs

Sisir Rajendrakumar Mishra (Minor), Through Krushnamurari RESPONDENT
and Others

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 3 GLR 2414

Hon'ble Judges : Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Vasavdatta Bhatt, for the Appellant; Ashish M. Dagli for Defendant Nos. 1 and 2, for the Respondent

Judgement

J.B. Pardiwala, J.—Since, the subject-matter of all the three First Appeals and the Cross-Objection is the same and the challenge is also to a common judgment and award passed by the Motor Accident Claims Tribunal (Auxiliary), Vadodara, those were heard analogously and are being disposed of by this common judgment and order. These Appeals under Sec. 173 of the Motor Vehicles Act, 1988 are at the instance of the Gujarat State Road Transport Corporation and are directed against a common judgment and award passed by the Motor Accident Claims Tribunal (Auxiliary), Vadodara dated 29th January, 1999 in Motor Accident Claim Petition Nos. 1654 and 1655 of 1992 respectively.

2. The claimants of First Appeal No. 2847 of 1999 arising from Motor Accident Claim Petition No. 1654 of 1992 have filed Cross-Objection for enhancement of the amount of compensation.

3. It appears from the materials on record that the parents of the claimants named Shri Rajendrakumar Mishra and Smt. Divyalataben Mishra along with their daughter Shraddha Mishra (Claimant No. 2) were travelling from Vaghodia towards Vadodara in a Maruti Van bearing Registration No. GJ-6-A 4063 on 22nd May, 1992 and at that point of time, they met with an accident with a S.T. Bus

bearing registration No. GQE 8893 of the ownership of the Gujarat State Road Transport Corporation.

4. According to the claimants, the driver of the S.T. Bus was travelling at a high speed and as a result of rash and negligent driving, the Bus got swerved on the wrong side of the road and rammed into the Maruti Van. In the accident, the parents of the claimants sustained serious injuries. The parents were shifted to S.S.G. Hospital and during the course of their treatment, the father and the mother of the claimants passed away. Shraddha, the daughter of the deceased, who was travelling along with her parents also sustained injuries and was admitted initially in a Government hospital, and thereafter, was shifted to a private hospital where she was treated for around 15 days. Shri Rajendrakumar Mishra was a practising Advocate in Vadodara.

5. According to the claimants, he had a very lucrative practice as an Advocate practising on Criminal Laws and was earning around Rs. 1.50 lac per annum. At the time of the accident, late Shri Rajendrakumar Mishra was aged about 35 years. The Tribunal, after taking into consideration the materials on record and more particularly the evidence as regards the income of late Shri Rajendrakumar Mishra, came to the conclusion that the income of the deceased could be assessed at Rs. 90,000/- per annum. The Tribunal, thereafter, added Rs. 90,000/- as future income which could have increased over a period of time, and deducted 1/3rd amount towards the personal expenses of the deceased. Thus, the Tribunal deducted 1/3rd from Rs. 1,80,000/- and fixed the dependency amount to the tune of Rs. 1,20,000/- per annum. Taking into consideration the fact that the deceased was aged about 35 years at the time of his death, the Tribunal adopted a multiplier of 15, and accordingly, assessed the total dependency amount to the tune of Rs. 18 lac. Over and above, Rs. 25,000/- was awarded under the head of pain, shock and sufferings and Rs. 10,000/- was awarded under the head of after-death ceremonies, transportation and medicines. The Tribunal ultimately passed an award to the tune of Rs. 18,35,000/- at the rate of 12% interest per annum from the date of the application till its realization and also proportionate costs.

6. So far as the First Appeal No. 2849 of 1999 which is arising from the judgment and award passed by the Tribunal in Motor Accident Claim Petition No. 1655 of 1992 is concerned, it relates to the death of Smt. Divyalataben Mishra, wife of late Shri Rajendrakumar Mishra, and the mother of the claimants.

7. It is the case of the claimants that late Smt. Divyalataben Mishra was a Graduate in the faculty of Arts and was giving tuition to the students of Standard V to VIII. Her income from tuition was around Rs. 2,000/- per month. Over and above giving tuition, late Smt. Divyalataben Mishra was also doing household work and was looking after the minor children. At the time of the accident, late Smt. Divyalataben Mishra was aged around 35 years. According to the claimants, taking the prospective income into consideration, the income of late Smt. Divyalataben Mishra could be assessed to the tune of Rs. 4,000/- per month. The

Tribunal, after taking into consideration the materials on record, came to the conclusion that the income of late Smt. Divyalataben Mishra could be assessed at Rs. 2,100/- per month and not Rs. 4,000/- as claimed by the claimants. Accordingly, the Tribunal assessed the income to the tune of Rs. 2,100/- per month and deducted 1/3rd amount towards the personal expenses. After deducting 1/3rd the figure of Rs. 1,400/- per month was arrived at and finally assessed the income to the tune of Rs. 16,800/- per annum. The Tribunal, taking into consideration the oral testimony and the post-mortem note of late Smt. Divyalataben Mishra, came to the conclusion that she was aged around 30 years and accordingly thought fit to adopt a multiplier of 15, which works out to Rs. 16,800/- x 15 = Rs. 2,52,000/-. In addition, Rs. 5,000/- was awarded under the head of expenses towards the after-death ceremonies and transportation. Accordingly, an amount of Rs. 2,57,000/- was awarded at the rate of 12% per annum from the date of the application till its realisation and proportionate costs.

8. Being dissatisfied with the award passed by the Tribunal, the Gujarat State Road Transport Corporation has come up with these two Appeals.

9. It appears that the stance of the appellant before the Tribunal was that the accident occurred due to rash and negligent driving on the part of late Shri Rajendrakumar Mishra and no negligence could be attributed to the driver of the S.T. Bus.

10. It was also the case of the appellant before the Tribunal that in the absence of any cogent and convincing material as regards the income of late Shri Rajendrakumar Mishra, the claim of Rs. 35 lac was quite imaginary. There was no evidence worth the name that late Shri Rajendrakumar Mishra had a very lucrative practice and was earning around Rs. 1.50 lac per annum. It was also the case of the appellant before the Tribunal that so far as the compensation claimed for the death of late Smt. Divyalataben Mishra is concerned, the claim of Rs. 9 lac was untenable and without any basis.

11. Mrs. Vasavdatta Bhatt, the learned Counsel appearing for the appellant, vehemently submitted that the judgment and award of the Tribunal is contrary to law and the evidence on record. Mrs. Bhatt submitted that the Tribunal committed a serious error in holding that the driver of the S.T. Bus was solely responsible for the accident. By placing reliance on the panchnama of the spot of accident and the position of the two vehicles, Mrs. Bhatt submitted that the accident was the result of rash and negligent driving on the part of the deceased. Mrs. Bhatt submitted that the Tribunal committed a serious error in relying on the oral evidence of Ms. Krushnamurari Ramshanker Mishra at Exh. 29. She submitted that the Tribunal also committed an error in relying on the evidence of Pradipbhai Joshi at Exh. 50, as according to Mrs. Bhatt, he was a chance witness. Mrs. Bhatt submitted that the Tribunal ought not to have rejected the evidence of the driver of the Bus at Exh. 55. The driver, in his oral evidence, has clearly deposed that he was driving the Bus on the left side of the road and the Maruti Van which was being driven by the deceased in a zigzag manner all of a sudden

dashed with the front portion of the Bus.

12. Mrs. Bhatt led much emphasis on the fact that the victim had no car of his own. According to Mrs. Bhatt, the victim was not even possessing a driving licence. Highlighting these two aspects, Mrs. Bhatt submitted that contributory negligence on the part of the victim should have been assessed by the Tribunal.

13. Mrs. Bhatt also very vehemently submitted that the professional income of the deceased could not have been assessed on the basis of the daily diaries which were maintained by the deceased. According to her, diaries produced before the Tribunal have no probative value, more particularly, in the absence of any income tax returns.

14. Mrs. Bhatt submitted that the Tribunal committed serious error even while assessing the income of the deceased Divyalataben. According to Mrs. Bhatt, there is no evidence worth the name to show that the deceased Divyalataben was earning Rs. 4,000/- per month from tuition fees. Mrs. Bhatt submitted that on the basis of the materials on record, interference of this Court with the award is necessary, and therefore, the award be modified appropriately.

15. Mr. Ashish M. Dagli, the learned Counsel appearing for the defendants submitted that so far as the claim petition of the deceased Rajendrakumar Mishra is concerned, the Tribunal ought to have awarded a sum of Rs. 35 lac towards compensation. According to Mr. Dagli that is the reason why he has filed Cross-Objections so far as the First Appeal No. 2847 of 1999 filed by the Corporation is concerned. Mr. Dagli submitted that so far as the First Appeal No. 2849 of 1999 arising from Motor Accident Claim Petition No. 1655 of 1992 is concerned, that is the one relating to the death of the deceased Divyalataben, no error, not to speak of any error of law, could be said to have been committed by the Tribunal. Mr. Dagli submitted that the deceased Rajendrakumar Mishra was in practice since 1976-1977 at Vadodara and had already conducted to his credit more than seventy Sessions cases before he met with the unfortunate accident. Mr. Dagli tried to impress upon us that he had a lucrative practice on the criminal side and the diary Exh. 41 which was maintained by the deceased Rajendrakumar Mishra would go to show that he had the income of around Rs. 1,90,000/- per annum. Mr. Dagli also submitted that the deceased Rajendrakumar Mishra had built-up a very good reputation as Advocate practising on Criminal Laws and many of the cases in which he used to appear were being reported in the newspapers. Mr. Dagli also relied upon Exh. 42 which are the receipts of the premium paid to the Insurance Company. He also relied on Exhs. 47 and 48 which are fixed deposit receipts to the tune of Rs. 76,000/-. According to Mr. Dagli, the income of the deceased Rajendrakumar Mishra could have been easily assessed at Rs. 20,000/- per month at the time of the accident. Mr. Dagli submitted that the Tribunal assessed the income of the deceased Rajendrakumar Mishra at Rs. 1,50,000/- per annum, and after deducting 1/3rd towards his personal expenses, arrived at the figure of Rs. 90,000/- as the average income. To this figure of Rs. 90,000/-, additional amount of Rs. 90,000/- was added as future income and from Rs.

1,80,000/-, deducted 1/3rd amount which comes to Rs. 1,20,000/-. According to Mr. Dagli, the calculations arrived at by the Tribunal are not correct. Mr. Dagli also invited our attention to the deposition of one Krushnamurari R. Mishra Exh. 29. This witness has deposed that the deceased had a residential property at Prabhat Society, Vaghodia Road, Vadodara. Thus, according to Mr. Dagli, the amount awarded so far as the deceased Rajendrakumar Mishra is concerned, deserves to be enhanced.

16. Having heard the learned Counsel for the respective parties and having gone through the materials on record, the only question that falls for our consideration is, whether the Tribunal committed any error in passing the award impugned.

17. It appears that the Tribunal has come to the conclusion that the accident occurred due to rash and negligent driving on the part of the driver of the S.T. Bus. To hold the driver of the S.T. Bus solely responsible for the accident, the Tribunal has placed reliance on the evidence of one Ms. Krushnamurari Mishra at Exh. 29 and one Pradipbhai Chandrakant Joshi at Exh. 50 including the oral evidence of the driver of the S.T. Bus at Exh. 55. So far as Ms. Krushnamurari Mishra is concerned, it appears that she is the elder sister of the deceased Rajendrakumar Mishra. As a guardian of the minor children of the deceased Rajendrakumar Mishra, she entered the box and deposed that her brother deceased Rajendrakumar Mishra along with his wife Divyalataben Mishra and their daughter Shraddha were travelling from Vaghodia towards Vadodara in a Maruti Van and met with an accident near factory of one Dhirubhai situated near Ankhhol Patia. She has deposed that she learnt about the accident through Advocates practising in the Court at Vadodara. She has very categorically deposed that she was not an eye-witness to the accident. In our opinion, her evidence is hardly of any consequence so far as the factum of rash and negligent driving on the part of the driver of the S.T. Bus is concerned.

18. We have also gone through the evidence of Pradipbhai at Exh. 50. According to this witness, he was called by the deceased Rajendrakumar Mishra on 22nd May, 1992 at around 10-30 in the morning. As the deceased Rajendrakumar Mishra wanted to visit the house of his in-laws at Vaghodia, the deceased Rajendrakumar Mishra called for this witness. He has further deposed that the deceased Rajendrakumar Mishra went to Vaghodia on a Scooter of this witness. This witness also accompanied the deceased Rajendrakumar Mishra on his Scooter. From Vaghodia, the deceased Rajendrakumar Mishra along with his wife Divyalataben Mishra and daughter Shraddha left for Vadodara in a Maruti Van. This witness followed the Maruti Van driving his Scooter. They left Vaghodia at around 2-30 in the afternoon. The Maruti Van was travelling at a normal speed. The accident occurred near Ankhhol Patia somewhere next to the factory of one Dhirubhai. He has deposed that the S.T. Bus was on the wrong side of the road and dashed with the left side of the maruti van, as a result of which, the Maruti Van got dragged by the Bus towards the northern direction to the extent of around 20 to 25 feet. He has further deposed that the distance between the

Maruti Van and the Scooter was around 50 feet. However, the most important part of his deposition is that, when this witness reached at the spot of the accident, the other lawyers from the Bar Association had already arrived at the spot of the accident and were making preparations to shift the injured persons to the hospital. In his cross-examination, this witness has deposed, on being shown photographs Mark-39/5, that the entire road is divided into two by a coloured stripe. The right hand side of the road is the road which travels from Vaghodia to Vadodara and the left hand side of the road travels from Vadodara to Vaghodia. He has deposed that according to the photographs the Bus was on the left hand side towards the road from Vadodara to Vaghodia. He has also deposed, on being shown the photographs Mark-39/1, that the Bus had stopped on the extreme right hand side of the road, which is a kachcha road. The left hand side of the Maruti Van had got extensively damaged and had got stuck with the front portion of the Bus. He denied the suggestion that the deceased Rajendrakumar Mishra lost control over his vehicle and got rammed into the Bus. He also deposed that it was not true to suggest that the Bus driver, with a view to save the occupants of the Maruti Van, swerved his Bus to the extreme left hand side, as a result of which, it came to a halt on a kachcha road.

19. Having gone through the deposition of this witness very closely, we are of the opinion that the Tribunal committed a serious error in believing this witness to be an eye-witness to the accident. In his examination-in-chief, this witness, in clear terms, has deposed that he was following the Maruti Van which was being driven by late Shri Rajendrakumar Mishra, on his Scooter. They were travelling from Vaghodia to Vadodara. This witness has deposed that by the time he reached the spot of the accident, other lawyers who were all friends of the deceased Rajendrakumar Mishra had already arrived at the spot of the accident and were making preparations to shift the injured persons to a hospital. If that be so, then it is very difficult for us to believe that he actually witnessed the accident. According to him, he was travelling on his Scooter only at a distance of around 50 feet from the Maruti Van. If that be so, then how come that the other lawyers of the Bar Association arrived at the spot of the accident immediately. This is suggestive of the fact that this witness, even if it is believed that he was travelling on a Scooter from Vaghodia to Vadodara, must have reached the spot of the accident only after the accident had occurred. He had no chance of witnessing the accident. According to his own version, the other Advocate friends of the deceased Rajendrakumar Mishra had already arrived. It would at least take some time for the others to arrive at the spot after learning about the accident. In such circumstances, we have no hesitation in discarding the evidence of this witness. Therefore, the most important question that falls for our consideration is, whether there is any evidence on record to establish as to how the accident occurred and who was responsible for the same. Whether the driver of the S.T. Bus was rash and negligent or whether the deceased Rajendrakumar Mishra was also equally negligent in driving the Maruti Van.

20. We are not impressed by the submission of Mrs. Bhatt that in the absence of

the licence, the deceased could not have driven the vehicle and that amounts to statutory violation, which eventually entails in contributory negligence for more than one reason.

21. First, there is no foundation for such a plea to be raised. It appears from the materials on record that such a plea was not even raised before the Tribunal. Secondly, there is not even a suggestion put to any of the witnesses in this regard.

22. We are of the opinion that if the appellant wanted to rely on this aspect, then in such circumstances, it was the duty of the appellant to lead cogent and convincing evidence. We should not consider such a plea only because Mr. Dagli, the learned Advocate appearing for the claimants, has conceded that the victim was not possessing a valid driving licence.

23. We may only say, reiterating the settled law, that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the opposite party. There has to be a casual relationship between violation and the accident caused.

24. The question of contributory negligence arises when there has been some act or omission on the part of the victim, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence. As held by the Supreme Court in the case of Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak and Others, , negligence ordinarily means breach of a legal duty to care, but when used in the expression contributory negligence, it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong.

25. We have seen the photographs of the spot of the accident along with the two vehicles. There are six photographs on record. It appears to us from the photographs that the Bus was travelling from Vadodara towards Vaghodia on the left hand side of the road and the Maruti Van was travelling on the right hand side of the road i.e. from Vaghodia towards Vadodara. The perusal of the photographs would indicate that the Maruti Van which was on the right hand side of the road, while travelling from Vaghodia towards Vadodara, rammed into the front portion of the Bus and it also appears that the driver of the S.T. Bus, with a view to avoid the contact, swerved the Bus on the extreme left hand side i.e. on the kachcha road, almost brushing the trees standing on the edge of the road.

26. We have also gone through the panchnama which was drawn of the spot of the accident including the position of the vehicles. Even the panchnama would indicate that the Bus was travelling in the middle of the road i.e. towards Vaghodia and was not on the wrong side so as to meet with an accident with a Maruti Van. It appears to us from the evidence of the driver of the S.T. Bus Exh. 55 that the driver slowed down the Bus near Ankhhol Patia as the driver saw that a Maruti Van was coming from the opposite direction and was travelling in a

zigzag manner. According to the evidence of the driver of the S.T. Bus, Exh. 55, he apprehended the accident, as a result of which he swerved the Bus on the extreme left hand side and immediately thereafter the Maruti Van dashed into the front portion of the Bus.

27. We have also gone through the cross-examination of this witness. But, it appears that nothing fruitful could be elicited so as to establish that it was solely the driver of the Bus who was rash and negligent, which resulted into the accident.

28. Thus, taking into consideration the oral evidence on record as well as the documentary evidence, we are of the opinion that the Tribunal committed an error in coming to the conclusion that the driver of the Bus was 100% negligent. In our opinion, the Tribunal ought to have addressed itself on the issue of contributory negligence. We are of the opinion that the driver of the Maruti Van should be held negligent to the extent of 50%.

29. We shall now consider whether the Tribunal awarded just compensation. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of thing, it has to take into account many imponderables, such as the life expectancy of the deceased, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live upto the estimated remaining period of life expectancy, the chances that the deceased might have got better employment or income or may have lost his employment or income altogether. Thus, for arriving at just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependents at the time of his death and the amount which he was accustomed to spend upon himself. This exercise has to be on the basis of the data brought on record by the claimants which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture as held by the Supreme Court in the case of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another,

30. We are of the view that the Tribunal committed an error in assessing the income of the deceased Rajendrakumar Mishra to the extent of Rs. 90,000/- per annum and adding a further amount of Rs. 90,000/- towards the future income, aggregating to Rs. 1,80,000/-, and thereafter, deducting 1/3rd amount towards his personal expenses, so as to fix the amount towards loss of dependency to the tune of Rs. 1,20,000/- per annum.

31. Indisputably, the deceased Rajendrakumar Mishra was a practising Advocate at Vadodara. We believe that he was practising on Criminal Laws as it appears that in some of the matters in which he had appeared for the accused like a bail application, etc., were reported in the newspaper. The newspaper clippings are also on record. During the course of hearing of these Appeals, we noticed that an

application being Civil Application No. 10557 of 1999 was filed on behalf of the claimants for taking note of additional evidence in support of the contention that the victim had a lucrative practice at the time of his death, in a Sessions Court. Accordingly, we gave opportunity to the claimants to file further affidavit, disclosing whether the victim was an income tax assessee and if he was so, to disclose the assessed income of the victim for the last three years before the accident. We also asked the claimants to adduce as regards the immovable property or movable property held by the deceased at the time of his death.

32. Mr. Dagli appearing for the claimants filed an affidavit placing the following documentary evidence on record:

- (1) Sale deed of a Motorcycle "Bullet", purchased by deceased Rajendrakumar Mishra, Advocate, from one Vasantbhai Chunawala, dated 22-3-1983;
- (2) Documents showing deceased Shri Divyalataben being a member of the Prabhat Colony Co-op. Housing Society Ltd., and of she having been allotted one Type-A Block No. 11(11-A) in the society, worth Rs. 96,600/- in the year 1985;
- (3) Share certificates held by deceased Shri Divyalataben in one Shri Swaminarayan Co-op. Bank Ltd., dated 28-4-1985 and 23-2-1985;
- (4) Documents of a Fire Policy for the above-mentioned property.

33. However, Mr. Dagli conceded that the victim was not a tax payer, and therefore, he could not place the income tax returns on record. It appears to us and fairly conceded that the victim had no car of his ownership. The Maruti Van in which the victim and his family members were travelling did not belong to them. There is no evidence on record even to suggest that the deceased Rajendrakumar Mishra had a driving licence. All that is coming on record is that he had one Motorcycle purchased in the year 1983. Even if we believe that the deceased Divyalataben Mishra was a member of the Prabhat Colony Co-operative Housing Society Limited having allotted one Type-A Block No. 11(11-A) in the society worth Rs. 96,600/- in the year 1985, it is difficult for us to reach to the conclusion that the income of the victim was Rs. 90,000/- per annum. By only taking into consideration the fact that since the victim was a practising Advocate on the Criminal side, his income should be assessed at Rs. 90,000/- per annum without any cogent materials on record, would be a dangerous proposition. Although Mr. Dagli tried to impress upon us that we should believe the entries of the fees received from the clients as reflected from the books of accounts Exh. 41, we are of the opinion that, that by itself is not sufficient to believe such income.

34. At this stage, it may not be out of place to refer Sec. 34 of the Evidence Act. Section 34 reads as under:

Sec. 34. Entries in books of account, including those maintained in an electronic form when relevant:- Entries in books of account, including those maintained in an electronic form regularly kept in the course of business, are relevant

whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

35. In order to apply the provision of Sec. 34, it would be necessary to establish that the books of accounts were regularly kept in the ordinary course of business. The entries made in such book of accounts would then become relevant and might be considered along with other evidence to put forward any claim, but these entries alone would not be sufficient to establish any claim or fasten any liability on any person. The entries in the books of accounts, are therefore, merely corroborative and primary evidence is always needed to prove the transaction mentioned therein.

36. In our, opinion, private diaries though regularly maintained and showing each item of income or expenditure, cannot be treated as books of accounts according to Sec. 34 of the Evidence Act. Books of accounts means accounts which are maintained in the regular course of business.

37. Even for the sake of arguments, if we believe the income of the victim as reflected from the books of accounts, there is no other materials indicating the expense which the victim was incurring as a professional. For the purpose of determining the actual income, it is necessary for us to know what was the office expenses and other miscellaneous expenses incurred by the victim. No such books of accounts regarding expenses were being maintained or have been produced in evidence. It is only after deducting the expenses from the gross income that the net income is ascertainable.

38. Apart from the above, in respect of incomes of all categories of tax payers (Corporate as well as Non-Corporate) liable to tax for the Assessment Year 1992-1993, the rates of income tax (including surcharge thereon) have been specified in Part-I of the First Schedule to the Income Tax Act and are the same as those laid down in Part III of the First Schedule to the Finance (No. 2) Act, 1991 for the purposes of computation of advance tax, deduction of tax at source from salaries and charging of tax payable in certain cases during the Financial Year 1991-1992.

39. Slabs of income with rates in the case of individuals, etc. at the relevant point of time were as under:

40. According to the claimants, the income of the victim per annum was more than Rs. 1 lac, thereby suggesting that the victim was falling in the Income Slab of 40%. If that be so, it is very difficult for us to believe that the victim although was earning more than Rs. 1 lac per annum, was not paying the income tax.

41. Although, Mr. Dagli very strenuously tried to convince us by submitting that in a span of 16 years of professional career the victim was able to conduct around 70 Sessions Cases, but there is hardly any evidence adduced to that effect except a mere bald assertion. One thing which we are not able to

understand is that, if the age of the victim at the time of the accident was 35 years and he started his practice in the year 1976-77, then in such circumstances his age at the time when he started practice must be around 19 years, which is just impossible. Before introduction of the policy of 10+2 pattern, a person used to complete Standard-XI, which in those days used to be treated as S.S.C., at the age of around 16 to 17 years. Thereafter three years for Graduation and three years for completing Graduation in Law. This is suggestive of the fact that atleast not before the age of 22 years a person would become a full-fledged Advocate. No evidence has been adduced as regards the date of Sanad issued by the Bar Council of Gujarat. In such circumstances, we are of the opinion that the award passed by the Tribunal deserves to be modified to a certain extent. The Tribunal has assessed the income of the victim at Rs. 90,000/- per annum and added the same amount towards future income. Even in a case of a Government servant, the income is not assessed on the basis of promotional salaries as it is well-settled that a promotion is an incidence of service and it is not sure, whether an employee would get promotion or not in future. We are of the view that even in profession no one is sure as regards the increase in the extent of practice.

42. We are of the opinion that the income of the victim could be assessed at Rs. 4,500/- per month, which will be Rs. 54,000/- per annum. Applying the principle as explained by the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, we are inclined to add Rs. 27,000/- i.e. 50% towards future income of the victim. We are conscious of the fact that it is again in the realm of speculation, particularly when unlike income from salaries, earnings in a profession may increase and at the same time may diminish for any reason. However, adding Rs. 27,000/-, we assess the dependency amount to the tune of Rs. 81,000/-.

43. We are inclined to deduct 1/4th amount towards the personal expenses of the victim which could be calculated to the tune of Rs. 60,750/-. Taking into consideration the age of the victim which was 35 years at the time of his death, we are inclined to give a multiplier of 16. Since, we have fixed the contributory negligence of the victim to the extent of 50%, the total amount of dependency could now be fixed to the tune of Rs. 30,375/- per annum. Multiplying Rs. 30,375/- by 16, the total amount would come to Rs. 4,86,000/-, to which Rs. 25,000/- is awarded under the head of pain, shock and sufferings and Rs. 10,000/- for the after-death ceremony expenses. Thus, the total amount comes to Rs. 5,21,000/-. We are of the view that the claimants are entitled to a total sum of Rs. 5,21,000/- with interest at the rate of 12% per annum from the date of the application till its realisation. We modify the award accordingly to the aforesaid extent.

44. So far as the amount of compensation awarded relating to the death of Smt. Divyalataben is concerned, we are of the opinion that the Tribunal was justified in assessing the monthly income of the victim at Rs. 2,100/- on the basis of the

materials on record. After deducting 1/3rd amount towards the personal expenses, the monthly income has been assessed to the tune of Rs. 1,400/-, which comes to Rs. 16,800/- per annum. The Tribunal was justified in giving a multiplier of 15, which works out to Rs. 2,52,000/-. The Tribunal also awarded Rs. 5,000/- under the head of expenses towards the after-death ceremonies and transportation. We are of the view that the Tribunal committed no error in awarding the amount of Rs. 2,57,000/- at the rate of 12% per annum from the date of the application till its realisation and no interference is warranted so far as the First Appeal No. 2848 of 1999 is concerned.

45. So far as the amount of compensation awarded relating to the injuries sustained by Shraddha i.e. the daughter of the victims, we are of the opinion that the Tribunal was justified in assessing compensation to the tune of Rs. 57,640/- at the rate of 12% per annum from the date of the application till its realisation. It appears from the materials on record that the injured was admitted to S.S.G. Hospital immediately after the accident where she was operated on the left leg knee and hip joint. Thereafter, she was shifted to a private hospital of one Dr. Bharat Swami and remained as an indoor patient for 25 days. A rod was inserted in the leg and even after discharge from the hospital, the treatment continued for a period of six months. There is evidence on record that a sum of Rs. 40,000/- was paid towards the medical expenses including the operation charges. From the evidence on record, it appears that the doctors have certified disability to the extent of 25% in the right lower limb and left upper limb of the injured. In such circumstances, we are of the view that no interference is warranted so far as the amount awarded in favour of the injured is concerned. For all the foregoing reasons, First Appeal No. 2847 of 1999 is partly allowed to the aforesaid extent.

In view of the order passed in First Appeal No. 2847 of 1999, the Cross-Objection No. 291 of 1999 filed by the claimants is also accordingly disposed of.

First Appeal No. 2848 of 1999 and First Appeal No. 2849 of 1999 are hereby dismissed with no order as to costs.